

LITTLETON, JOYCE, UGHETTA, PARK & KELLY LLP
Wendy B. Shepps (WS-1207)
Attorneys for Defendant Cohen & Slamowitz, LLP
39 Broadway, 34th Floor
New York, New York 10006
(212) 404-5777

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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YOSEF LOWENBEIN on behalf of himself and,	:
all others similarly situated	:
	:
Plaintiff,	:
	:
- against -	:
	: 11-CV-2888
	:
COHEN & SLAMOWITZ, LLP	: <u>ANSWER</u>
	:
Defendants.	:
-----X	

Defendant, COHEN & SLAMOWITZ, LLP (hereinafter "Defendant or "COHEN & SLAMOWITZ"), by its attorneys, LITTLETON, JOYCE, UGHETTA, PARK & KELLY LLP hereby responds, upon information and belief, to the Plaintiff's Complaint, as follows:

FIRST: Denies the truth of each and every allegation contained within paragraph "1" of Plaintiff's Complaint.

SECOND: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within paragraph "2" of Plaintiff's Complaint.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within paragraph "3" of Plaintiff's

Complaint, and in addition, refers all questions of law to the trial court for judicial determination.

FOURTH: Admits the truth of the allegations contained within paragraph “4” of Plaintiff’s Complaint.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within paragraph “5” of Plaintiff’s Complaint.

SIXTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within paragraph “6” of Plaintiff’s Complaint, and in addition, refers all questions of law to the trial court for judicial determination.

SEVENTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within paragraph “7” of Plaintiff’s Complaint, and in addition, refers all questions of law to the trial court for judicial determination.

EIGHTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within paragraph “8” of Plaintiff’s Complaint, and in addition, refers all questions of law to the trial court for judicial determination.

NINTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within paragraph “9” of Plaintiff’s Complaint.

TENTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within paragraph “10” of Plaintiff’s Complaint.

ELEVENTH: Denies the truth of each and every allegation contained within paragraph “11” of Plaintiff’s Complaint.

TWELFTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within paragraph “12” of Plaintiff’s Complaint.

THIRTEENTH: Denies the truth of each and every allegation contained within paragraph “13” of Plaintiff’s Complaint.

PLAINTIFF’S FIRST CAUSE OF ACTION

FOURTEENTH: Defendant repeats, reiterates and realleges each and every denial and denial asserted upon information and belief in response to paragraphs “1” through “14” of the Plaintiff’s Complaint as if the same were repeated verbatim at length herein.

FIFTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within paragraph “15” of Plaintiff’s Complaint.

SIXTEENTH: Denies the truth of each and every allegation contained within paragraph “16” of Plaintiff’s Complaint.

SEVENTEENTH: Denies the truth of each and every allegation contained within paragraph “17” of Plaintiff’s Complaint.

EIGHTEENTH: Denies the truth of each and every allegation contained within paragraph “18” of Plaintiff’s Complaint, inclusive of subparagraphs (A) through (E).

NINETEENTH: Denies the truth of each and every allegation contained within paragraph “19” of Plaintiff’s Complaint.

TWENTIETH: Denies the truth of each and every allegation contained within paragraph “20” of Plaintiff’s Complaint.

TWENTY-FIRST: Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within paragraph “21” of Plaintiff’s Complaint, and in addition, refers all questions of law to the trial court for judicial determination.

TWENTY-SECOND: Denies the truth of each and every allegation contained within paragraph “22” of Plaintiff’s Complaint.

TWENTY-THIRD: Denies the truth of each and every allegation contained within paragraph “23” of Plaintiff’s Complaint.

**AS AND FOR ANSWERING DEFENDANT’S
FIRST AFFIRMATIVE DEFENSE**

Plaintiff’s Complaint fails to state a valid cause of action upon which relief may be granted.

**AS AND FOR ANSWERING DEFENDANT’S
SECOND AFFIRMATIVE DEFENSE**

The Plaintiff’s Complaint is not supported by documentary evidence.

**AS AND FOR ANSWERING DEFENDANT'S
THIRD AFFIRMATIVE DEFENSE**

Upon information and belief, the causes of action asserted in the Plaintiff's Complaint against the Answering Defendant are barred in whole or in part by the doctrine of estoppel.

**AS AND FOR ANSWERING DEFENDANT'S
FOURTH AFFIRMATIVE DEFENSE**

If plaintiff has incurred any damages herein, which claim is expressly denied, such damages are the result of his own culpable conduct.

**AS AND FOR ANSWERING DEFENDANT'S
FIFTH AFFIRMATIVE DEFENSE**

Defendant did not violate, in whole or in part, any provision of the FDCA.

**AS AND FOR ANSWERING DEFENDANT'S
SIXTH AFFIRMATIVE DEFENSE**

To the extent a violation of any provision of 15 USC §1692 occurred, which violation is expressly denied, such violation was not intentional and resulted from a *bona fide* error notwithstanding reasonable procedures adopted to avoid any such error.

**AS AND FOR ANSWERING DEFENDANT'S
SEVENTH AFFIRMATIVE DEFENSE**

To the extent a violation of any provision of 15 USC §1692 occurred, which violation is expressly denied, such violation was the result of acts of non-agents, or agents acting outside the scope of their authority.

**AS AND FOR ANSWERING DEFENDANT'S
EIGHTH AFFIRMATIVE DEFENSE**

The instant action is bared by the expiration of the applicable statute of limitations.

**AS AND FOR ANSWERING DEFENDANT'S
NINTH AFFIRMATIVE DEFENSE**

Plaintiff is precluded by the doctrine of waiver and estoppel.

**AS AND FOR ANSWERING DEFENDANT'S
TENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate his damages.

WHEREFORE, Answering Defendant COHEN & SLAMOWITZ, LLP, respectfully requests that this Court enter judgment herein dismissing Plaintiff's claims against them in their entirety, together with such other, further and different relief as this Court deems just and proper.

Dated: New York, New York
August 17, 2011

Respectfully Yours,

**LITTLETON, JOYCE, UGHETTA,
PARK & KELLY LLP**




By: _____
Wendy B. Shepps (WS1207)
Attorneys for Defendant
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(212) 404-5777
File No.: 07883.00057

TO: Adam Fishbein, P.C.
Attorneys for Plaintiff
Yehuda Litvinchouk
483 Chestnut Street
Cedarhurst, New York 11516

CERTIFICATE OF SERVICE

I, Wendy B. Shepps, hereby certify that on August **17**, 2011, I electronically filed the foregoing Answer with the Clerk of the District Court using its CM/ECF system which would then electronically notify Adam Fishbein, P.C., counsel for the Plaintiff.


Wendy B. Shepps (WS 1207)